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7 Attorneys for Plaintiff
8 CHURCH OF SCIENTOLOGY INTERNATIONAL

RECEIVED

JUN 29 1992

HUB LAW OFFICES

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 CHURCH OF SCIENTOLOGY)
12 INTERNATIONAL, a California)
13 not-for-profit religious)
14 corporation,)
15)
16)
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18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Plaintiff,

vs.

GERALD ARMSTRONG and DOES 1
through 25, inclusive,

Defendants.

CASE NO. BC 052395

REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S DEMURRER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT

DATE: July 2, 1992
TIME: 8:30 a.m.
DEPT: 30

DISCOVERY CUTOFF: None
MOTION CUTOFF: None
TRIAL DATE: None

20 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

21 Plaintiff, Church of Scientology International, requests
22 this Court to take judicial notice of the following documents:
23

24 1) Minute Order of May 28, 1992 issued by the Honorable
25 Ronald M. Sohigian in the instant case (attached hereto as
26 Exhibit A), granting Preliminary Injunction;

27 2) Temporary Restraining Order issued by the Honorable
28 Michael B. Dufficy in the instant case on March 5, 1992

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(attached hereto as Exhibit B);

3) Order Re Defendant's Motion to Dismiss or Stay or Transfer to Los Angeles Superior Court issued in the instant case on March 24, 1992 (attached hereto as Exhibit C); and

4) A copy of the case of Trump v. Trump (1992) ____ N.Y. 2d. ____.

DATED: June 25, 1992

Respectfully submitted,

BOWLES & MOXON

Laurie J. Bartilson
Laurie Bartilson ^{H9}

Andrew H. Wilson
WILSON, RYAN & CAMPIILONGO

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
Honorable Ronald M. Schigian, Judge
1

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International
vs.

Counsel For
Plaintiff

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

In this matter heretofore taken under submission on May 27, 1992, the court now makes the following ruling.

1 Plaintiff's legal remedies are inadequate insofar as the scope of relief ordered below is concerned, but not otherwise. CCP 526(4) and (5).

2 The threatened acts which are restrained by the order referred to below, but only those threatened acts, would do irreparable harm to plaintiff which could not be compensated by monetary damages. CCP 526(2).

3 On the basis of the instant record, there is a reasonable probability that plaintiff will prevail after trial of this case in the respects restrained by this order. CCP 526(1); cf., San Francisco Newspaper Printing Co., Inc. vs. Superior Court (Miller) (1985) 170 Cal. App. 3d 438.

4 Plaintiff is likely to suffer greater injury from denial of the preliminary injunction the terms of which are set out below than the injury which defendant is likely to suffer if it is granted. See Robbins vs. Superior Court (County of Sacramento) (1985) 38 Cal. 3d 199, 206.

5 The granting of a preliminary injunction in the terms set out below will preserve the status quo pending trial.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
Honorable Ronald M. Sohigian, Judge
1a

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For
Plaintiff

vs.

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

6 Application for preliminary injunction is granted in part, in the following respects only.

Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:

Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.

Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
 Honorable Ronald M. Schigian, Judge
 1b

M. Cervantes, Deputy Clerk
 None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For
Plaintiff

vs.

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

The application for preliminary injunction is otherwise denied.

7 The restraints referred to in sec. 6, above, will become effective upon plaintiff's posting an undertaking in the sum of \$70,000 pursuant to CCP 529(a) by 12:00 noon on June 5, 1992.

8 The restraints referred to in sec. 6, above, properly balance and accommodate the policies inherent in: (a) the protectable interests of the parties to this suit; (b) the protectable interests of the public at large; (c) the goal of attaining full and impartial justice through legitimate and properly informed civil and criminal judicial proceedings and arbitrations; (d) the gravity of interest involved in what the record demonstrates defendant might communicate in derogation of the contractual language; and (e) the reasonable interpretation of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986. The fair interpretation of all the cases cited by the parties indicates that this is the correct decisional process. The law appropriately favors settlement agreements. Obviously, one limitation on freedom of contract is "public policy"; in determining what the scope of the public policy limitation on the parties' rights to enforcement of their agreement in the specific factual context of this case, the court has weighed the factors referred to in the first sentence of this section. Litigants have a substantial range of contractual freedom, even to the extent of agreeing not to assert or exercise rights which they might otherwise have. The instant record shows that plaintiff was substantially compensated as an aspect of the agreement, and does not persuasively support defendant's claim of duress or that the issues involved in this preliminary injunction proceeding were precluded by any prior decision.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
 Honorable Ronald M. Sohigian, Judge
 1c

M. Cervantes, Deputy Clerk
 None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For
Plaintiff

vs.

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

9 The court does not dispositively decide the underlying merits of the case except for this preliminary determination. CCP 526(1); Baypoint Mortgage Corp. vs. Crest Premium Real Estate etc. Trust (1985) 168 Cal. App. 3d 818, 823.

10 Plaintiff is ordered give written notice by mail by June 5, 1992, including in that written notice a statement regarding whether plaintiff has or has not posted the undertaking referred to in sec. 7, above, and attaching to that written notice evidence showing that the undertaking has been posted if that is the fact.

DATED: May 28, 1992.

RONALD M. SOHIGIAN

 RONALD M. SOHIGIAN
 Judge of the Superior Court

A copy of this minute order is sent to counsel via United States mail this date.

FILED

MAR - 5 1992

HOWARD HANSON
MARIN COUNTY CLERK
By A. Cooper, Deputy

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8 Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF MARIN

| | | | |
|----|-----------------------------|---|-----------------------------|
| 12 | CHURCH OF SCIENTOLOGY |) | Case No. 152229 |
| | INTERNATIONAL, a California |) | |
| 13 | not-for-profit religious |) | TEMPORARY RESTRAINING ORDER |
| | corporation; |) | |
| 14 | |) | |
| | Plaintiff, |) | |
| 15 | |) | |
| | vs. |) | |
| 16 | |) | |
| | GERALD ARMSTRONG; DOES 1 |) | |
| 17 | through 25, inclusive, |) | |
| | |) | |
| 18 | Defendants. |) | |
| | |) | |

19
20 Plaintiff's application for a Temporary Restraining Order was
21 heard by the Court on this 3rd day of March, 1992, and good cause
22 appearing therefor,

23 IT IS HEREBY ORDERED:

24 1. Pending the hearing on Plaintiff's Motion for a
25 Preliminary Injunction, to be heard by the Court on March 20, 1992
26 at 9:00 a.m., Defendant Gerald Armstrong ("Armstrong" or
27 "Defendant"), his agents ~~and all those acting in concert with him,~~
28 are hereby temporarily enjoined from violation of that certain

WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

1 Settlement Agreement ("Agreement") dated December 6, 1986, including
2 the following:

3 2. Armstrong is restrained from violating Paragraph 7(d)
4 which prohibits Armstrong from creating or publishing books or
5 magazine articles, disclosing his experiences with Scientology, and
6 any knowledge or information he may have concerning the Church of
7 Scientology, L. Ron Hubbard, or any of the organizations listed in
8 Paragraph 1 of the Agreement ("Scientology organizations")
9 affiliated therewith, disclosing documents identified in Exhibit A
10 to the Settlement Agreement, including films, tapes, photographs,
11 recordings or variations or copies of any such materials which
12 concern or relate to the religion of Scientology, L. Ron Hubbard or
13 any of the Scientology organizations;

14 3. Defendant is restrained from violating the provisions of
15 Paragraph 7(g) which prohibits Defendant from voluntarily assisting
16 or cooperating with any person adverse to Scientology in any
17 proceeding against any of the Scientology organizations, or from
18 cooperating in any manner with any organizations aligned against
19 Scientology;

20 4. Defendant is restrained from violating the provisions of
21 Paragraph 7(h) which prohibits Defendant from testifying or
22 participating in judicial or administrative proceedings adverse to
23 Scientology or any of the Scientology organizations unless compelled
24 to do so by subpoena or lawful process;

25 5. Defendant is restrained from violating the provisions of
26 Paragraph 10, which prohibits Defendant from assisting or advising
27 anyone, including individuals, partnerships, associations,
28 corporations, or governmental entities contemplating any claim or

1 engaged in litigation or involved in or contemplating any activity
2 adverse to the interests of any of the Scientology organizations;

3 6. Defendant is restrained from violating the provisions of
4 Paragraph 18(d), which prohibits Defendant from disclosing the
5 contents of the Agreement;

6 7. Nothing in this Order shall be construed to prohibit
7 Armstrong from working in the employ of, or as an independent
8 contractor for, Ford Greene on matters not involving the Church of
9 Scientology International or any of the Scientology organizations.

10 DATED: 3 / 5, 1992.

MICHAEL B. DUFFICY

JUDGE OF THE SUPERIOR COURT

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FILED

MAR 24 1992

**HOWARD HANSON
MARIN COUNTY CLERK
By A. Couper, Deputy**

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13 Attorneys for Plaintiff
14 CHURCH OF SCIENTOLOGY INTERNATIONAL

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF MARIN

17 CHURCH OF SCIENTOLOGY)
18 INTERNATIONAL, a California)
19 not-for-profit religious)
20 corporation;)
21)
22 Plaintiff,)
23)
24 vs.)
25)
26 GERALD ARMSTRONG; DOES 1)
27 through 25, inclusive,)
28)
29 Defendants.)

Case No. 152229

ORDER RE DEFENDANT'S
MOTION TO DISMISS OR STAY
OR TRANSFER TO LOS ANGELES
SUPERIOR COURT

30 Defendant's motion for a change of venue was heard on March 20,
31 1992 at 9:00 a.m. in the above-entitled Court. Plaintiff was
32 represented by Wilson, Ryan and Campilongo, Andrew H. Wilson
33 appearing, and by Bowles and Moxon, Laurie J. Bartilson appearing.
34 Defendant was represented by Ford Greane.

35 Whereas, the Honorable Bruce R. Gaernaert of the Los Angeles
36 Superior Court, having replaced Paul G. Breckenridge, Jr., in Church
37 of Scientology of California v. Gerald Armstrong, Los Angeles
38 Superior Court Case No. C 420 153, narrowly ruled on December 23,

WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

SCI02.003

1 1991 that pursuant to Code of Civil Procedure sections 127(a)(4) and
2 664.4 he did not have jurisdiction to enforce the Mutual Release of
3 all Claims and Settlement Agreement executed December 6, 1986; and

4 Whereas, Paragraph 20 of said Agreement is nevertheless
5 effective as a forum selection clause which this court may enforce
6 under Smith v. Superior Court (1986); and

7 Having reviewed the written arguments and evidence submitted by
8 the parties, and having heard the arguments of counsel,

9 It is therefore ORDERED as follows:

10 1. Defendant's motion to transfer the file in Marin County
11 Superior Court Case No. 152229 is GRANTED.

12 a. It is FURTHER ORDERED that the file herein shall be
13 transferred to James H. Dampsey, Executive Officer and Clerk of the
14 superior court of Los Angeles, 111 North Spring Street, Los Angeles,
15 California, 90012 immediately after the expiration of twenty (20)
16 days of the date of this Order as required by Code of Civil
17 Procedure sections 999 and 400, the parties hereby waiving the
18 written notice required by Code of Civil Procedure Section 400.

19 b. It is FURTHER ORDERED that pursuant to Code of Civil
20 Procedure section 399 Plaintiff shall pay the costs of transfer of
21 the file to Los Angeles Superior Court.

22 c. It is FURTHER ORDERED that this Court shall retain
23 jurisdiction to determine, upon noticed motion, whether Defendant
24 should be awarded fees and costs in connection with the bringing of
25 the motion to transfer and to enforce, if necessary, paragraphs a. d.
26 through f. until the earlier of May 4, 1992 or the date a
27 preliminary injunction motion is appealed or denied in the Los
28 Angeles Superior Court.

1 2. This Court's order of March 3, 1992 is hereby extended ^{and}
2 through and including the earlier of May 4, 1992 ^{or further order of the court.}
3 ~~preliminary injunction is granted or denied by the Los Angeles~~ ^{FB}

4 Superior Court. Defendant Gerald Armstrong and his agents are
5 hereby enjoined from violation of that certain Settlement Agreement
6 ("Agreement") dated December 6, 1986, including the following:

7 a. Armstrong is restrained from violating Paragraph 7(d)
8 which prohibits Armstrong from creating or publishing books or
9 magazine articles, disclosing his experiences with Scientology, and
10 any knowledge or information he may have concerning the Church of
11 Scientology, L. Ron Hubbard, or any of the organizations listed in
12 Paragraph 1 of the Agreement ("Scientology organizations")
13 affiliated therewith, disclosing documents identified in Exhibit A
14 to the Settlement Agreement, including films, tapes, photographs,
15 recordings or variations or copies or any such materials which
16 concern or relate to the religion of Scientology, L. Ron Hubbard or
17 any of the Scientology organizations;

18 b. Defendant is restrained from violating the provisions
19 of Paragraph 7(g) which prohibits defendant from voluntarily
20 assisting or cooperating with any person adverse to Scientology in
21 any proceeding against any of the Scientology organizations, or from
22 cooperating in any manner with any organizations aligned against
23 Scientology;

24 c. Defendant is restrained from violating the provisions
25 of Paragraph 7(h) which prohibits Defendant from testifying or
26 participating in judicial or administrative proceedings adverse to
27 Scientology or any of the Scientology organizations unless compelled
28 to do so by subpoena or lawful process;

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d. Defendant is restrained from violating the provisions of Paragraph 10, which prohibits Defendant from assisting or advising anyone, including individuals, partnerships, associations, corporations, or governmental entities contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any of the Scientology organizations;

e. Defendant is restrained from violating the provisions of Paragraph 18(d), which prohibits Defendant from disclosing the contents of the Agreement;

f. Nothing in this Order shall be construed to prohibit Armstrong from working in the employ of, or as an independent contractor for, Ford Greene on matters not involving the Church of Scientology International or any of the Scientology organizations.

DATED 3/24, 1992. MICHAEL B. DUFFICY
JUDGE OF THE SUPERIOR COURT

Approved as to form:

Ford Greene, Esq.
Attorney for Defendant Gerald
Armstrong

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT, February 1992

Joseph P. Sullivan, J.P.
John Carro
Ernst H. Rosenberger
Richard W. Wallach
Israel Rubin, JJ.

APR 16 1992

Ivana Trump,

Plaintiff-Respondent,

-against-

Donald J. Trump,

Defendant-Appellant.

45386
and
M-177

Defendant-appellant appeals from a supplemental judgment, Supreme Court, New York County (Fhyllis Gangel-Jacob, J.), entered May 29, 1991, which, pursuant to a stipulation of settlement, resolved the plaintiff's action challenging the enforceability of the parties' post-nuptial agreement.

Jay Goldberg, of counsel (Judd Burstein, with him on the brief, Tenzer, Greenblatt, Fallon and Kaplan, attorneys) for defendant-appellant,

Robert Stephan Cohen, of counsel (Jonathan W. Lubell and Arlene R. Smoler, with him on the brief, Morrison Cohen Singer & Weinstein, attorneys) for plaintiff-respondent.

SULLIVAN, J.

The husband appeals from a supplemental judgment which, pursuant to a stipulation of settlement, resolved the wife's action challenging the enforceability of the parties' post-nuptial agreement. In their stipulation, the parties, subject to a number of specific modifications not here relevant, explicitly ratified the post-nuptial agreement, including a certain confidentiality provision. A proposed supplemental judgment incorporating by reference the post-nuptial agreement, as modified by the stipulation of settlement, was thereafter submitted to the court, which, sua sponte, without notice to the parties or explanation, excluded the confidentiality provision from incorporation into the supplemental judgment. Since the court's unilateral action in deleting the confidentiality provision was both unjustified and unauthorized, we modify to vacate the deletion.

Married on April 9, 1977, the parties, with the advice of separate counsel, on December 24, 1987, entered into a post-nuptial agreement (the Agreement), which superceded three prior agreements dated March 22, 1977, July 24, 1979 and May 25, 1984, respectively. Paragraph 9(b) of the Agreement set out, in the event of divorce or separation, the parties' rights and

obligations, including, inter alia, the husband's obligation to pay \$350,000 per annum to the wife as maintenance and \$10,000,000 in a lump sum within 90 days after entry of a decree of divorce. Paragraph 10 of the Agreement provides:

Without obtaining [the husband's] written consent in advance, [the wife] shall not directly or indirectly publish, or cause to be published, any diary, memoir, letter, story, photograph, interview, article, essay, account, or description or depiction of any kind whatsoever, whether fictionalized or not, concerning her marriage to [the husband] or any other aspect of [the husband's] personal, business or financial affairs, or assist or provide information to others in connection with the publication or dissemination of any such material or excerpts thereof. *** Any violation of the terms of this Paragraph (10) shall constitute a material breach of this agreement. In the event such breach occurs, [the husband's] obligations pursuant to Paragraph (9) hereof, to make payments or provisions to or for the benefit of [the wife], shall thereupon terminate. In addition, in the event of any such breach, [the wife] hereby consents to the granting of a temporary or permanent injunction against her (or against any agent acting in her behalf) by any court of competent jurisdiction prohibiting her (or her agent) from violating the terms of this Paragraph.

Paragraph 12 of the Agreement states:

In the event that an action for divorce is instituted at any time hereafter by either party against the other in any court of competent jurisdiction, the parties hereto agree that they nevertheless shall be bound by all of the terms of this Agreement. To

the extent possible and appropriate this Agreement shall be incorporated in the decree to be entered in such action and shall not be merged therein. If there be anything in such judgment or decree inconsistent with any of the terms or provisions of this Agreement, the terms and conditions of this Agreement shall govern and shall survive such decree.

In March, 1990, the wife commenced an action, alleging, inter alia, that, to the extent the Agreement provides that she has waived her claims to marital property under Domestic Relations Law §236, it is unconscionable and the product of overreaching and fraud and, thus, unenforceable and seeking a declaration to that effect. The wife subsequently instituted an action for divorce. Both cases were assigned to the same IAS court, which, without resolving the issue as to the enforceability of the Agreement, on December 12, 1990, granted the wife a judgment of divorce on the ground of cruel and inhuman treatment.

Thereafter, on March 22, 1991, the parties, after extensive negotiations, disposed of the declaratory judgment action by entering into a stipulation of settlement which, except for certain modifications not relevant herein, expressly ratified all the provisions of the Agreement. The stipulation further provided, "[The wife's] acceptance of the check for \$10,000,000 tendered herewith on the evening of March 22, 1991 shall constitute the parties' irrevocable acceptance of the terms of

this stipulation and any documents executed in connection herewith." The wife withdrew her claims challenging the enforceability of the Agreement and, on May 22, 1991, the IAS court signed a supplemental judgment incorporating by reference all the terms of the Agreement, as modified by the March 22, 1991 stipulation of settlement, except paragraph 10, which it, sua sponte and without explanation or notice to the parties, excluded.

It is well settled that, in the absence of any affront to public policy, parties to a civil dispute have the right to chart their own litigation course. (T.W. Oil, Inc. v. Consolidated Edison Co. of New York, Inc., 57 NY2d 574, 579-580.) "[C]ourts have long favored and encouraged the fashioning of stipulations as a means of expediting and simplifying the resolution of disputes." (Mitchell v. New York Hosp., 61 NY2d 208, 214.) In disposing of such litigation, parties "may stipulate away statutory, and even constitutional rights." (Matter of New York, Lackawanna & Western R.R. Co., 98 N.Y. 447, 453; see, Matter of Abramovich v. Board of Educ., 46 NY2d 450, 456, cert. den., 444 U.S. 845 [waiver of due process right to a hearing]; Matter of Sonenberg v. Fuller, 114 AD2d 677 [waiver of due process and equal protection rights].) Of course, given a showing of cause sufficient to invalidate a contract, such as fraud, collusion, mistake or some such similar ground, a court may relieve a party

from the consequences of his or her stipulation. (1420 Concourse Corp. v. Cruz, 135 AD2d 371, 372.)

Quite apart from the latter considerations, the wife contends that in declining to incorporate the confidentiality clause of the Agreement into the supplemental judgment of divorce, the IAS court properly invoked the discretion specifically afforded it by the parties in paragraph 12 of the Agreement. She argues that since the court was bound to incorporate the terms of the Agreement "[t]o the extent possible and appropriate," it was vested with the discretion to refuse to incorporate those provisions it deemed inappropriate. To interpret the phrase "[t]o the extent possible and appropriate" as conferring upon the court the unfettered discretion to pick and choose the terms of the Agreement, as ratified by the stipulation of settlement, it deemed appropriate for incorporation would result in a complete undoing of the settlement and violate the principle that the parties are free to chart their own litigation course. The only reasonable interpretation of the clause is that it authorizes the court, for sound reasons and after notice to the parties, to refuse to incorporate some of the terms of the Agreement. Thus, contrary to the wife's arguments, paragraph 12 itself does not afford the court any more authority to interfere with the parties' own agreement than the court would have under existing law.

Moreover, and perhaps more important, is the manner in which the IAS court refused to incorporate paragraph 10. Even assuming that the court had a sound basis for refusing to enforce the confidentiality clause, as a matter of procedural due process, the parties were entitled to notice and an opportunity to be heard before the court, sua sponte, altered the terms of their agreement. The use of the word "appropriate" in paragraph 12 can only be reasonably interpreted as contemplating that the decision not to incorporate a provision of the Agreement would be discussed and that any attempt to limit the incorporation of any provision would be made to the court on appropriate notice and with an opportunity to be heard. In the absence of any indication that the parties had such notice, it is apparent that the court acted without authority in excluding paragraph 10 from incorporation into the supplemental judgment. Moreover, in the absence of some explanation of the court's refusal to incorporate paragraph 10, we are not in a position to review the merits of its actions.

The wife also advances a substantive argument justifying the court's refusal to incorporate paragraph 10 into the supplemental judgment. She claims that, absent a compelling state interest, the federal and New York State constitutions bar a court from issuing a prior restraint barring an individual from ever publishing any statements about a specific subject. Of course,

we can only speculate that this was the rationale for the court's actions since, as noted, it gave no explanation as to its reasons. Furthermore, the constitutional prohibition against prior restraint applies only to orders issued by the government. In arguing that a divorce judgment incorporating the terms of a post-nuptial agreement is the equivalent of a governmental order, the wife takes a great leap in logic. We reject such a premise.

Nor is there any evidence or indeed any claim that the Agreement was the product of fraud, collusion, mistake, accident, or some such similar ground. While the supplemental judgment was entered in the context of a lawsuit in which the wife had originally claimed fraud and duress, those claims had been withdrawn and the court, by incorporating the Agreement into the judgment, placed its own stamp of approval on its terms, as well as on the wife's withdrawal of her fraud and duress claims.

In any event, even in the absence of the trial court's approval, there is no basis for a fraud or duress claim with respect to paragraph 10 of the Agreement. In commencing an action challenging the validity of the Agreement, the wife sought a declaration that it is unenforceable only to the extent that it provides that the wife has waived her claim to marital property or restricted the rights of the children of the marriage. At no time did she claim that paragraph 10 was the result of fraud or duress. When, on March 22, 1991, the parties entered into a

settlement of that action, they agreed to modify certain portions of the Agreement and to ratify the unchanged portions. Thus, the wife twice agreed to abide by paragraph 10: in 1987 when she signed the Agreement and in 1991 when she entered into the stipulation of settlement; she was represented by counsel on both occasions.

Since it is clear that the trial court exceeded its "limited authority to disturb the terms of a separation agreement" (Kleila v. Kleila, 50 NY2d 277, 283) and paragraph 10 does not, on its face, offend public policy as a prior restraint on protected speech (see, Snepp v. United States, 444 U.S. 507), we modify to incorporate the terms of said agreement into the supplemental judgment as agreed to by the parties.

Accordingly, the supplemental judgment of divorce of the Supreme Court, New York County (Phyllis Gangel-Jacob, J.), entered May 29, 1991, should be modified, on the law, to delete therefrom the exception of paragraph 10 of the December 24, 1987 post-nuptial agreement from incorporation therein and, except as

thus modified, affirmed, without costs or disbursements.

M-177 Trump v Trump

Motion by plaintiff-respondent to strike statements of
alleged fact in appellant's brief is denied.

All concur.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT

ENTERED: April 16, 1992

Catherine O'Hagan Walker
Clerk: DEPUTY CLERK

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On June 25, 1992, I served the foregoing document described as REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT on interested parties in this action by

- [] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;
- [X] by placing [] the original [X] a true copy thereof in sealed envelopes addressed as follows:

Paul Morantz **BY HAND**
P.O. Box 511
Pacific Palisades, CA 90272

- [] BY MAIL
- [] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
- [] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on June 25, 1992, at Los Angeles, California.

[X] **** (BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

Executed on June 25, 1992, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Howard Cutfield
Type or Print Name

Howard Cutfield
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On June 25, 1992, I served the foregoing document described as REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT on interested parties in this action by

- [] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;
- [X] by placing [] the original [X] a true copy thereof in sealed envelopes addressed as follows:

Ford Greene **BY U.S. MAIL**
HUB Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, CA 9490-1949

Graham Berry **BY U.S. MAIL**
Lewis D'Amato, Brisbois & Bisgaard
221 N. Figueroa St.
Suite 1200
Los Angeles, CA 90012

- [X] BY MAIL
- [] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
- [X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is

presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on June 25, 1992, at Los Angeles, California.

[] **** (BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

Executed on June 25, 1992, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Paul Broadhead
Type or Print Name


Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)